IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 245 OF 2007
IN
LETTERS PATENT APPEAL NO. 28 OF 2004

The Employees' Provident Fund Organisation,
Ministry of Labour, Government of India, & Ors. ...Applicants

V/s.

The Maharashtra State Cooperative Bank Ltd. & Ors. ...
Respondents

Ms. Seema Chettri i/by Mr. Suresh Kumar for the Applicants

Mr. Prashant Naik for the Respondents.

CORAM: **J.N. PATEL AND**
A.A. SAYED, JJ.
DATE: **July 19, 2007**

P.C.:-

1. An application has been filed by the Assistant Provident Fund Commissioner on behalf of original respondent Nos. 2 to 5, stating that they have to recover a sum of Rs.2,40,45,000/-, which should be payable by respondent No. 3, along with interest at the rate of 12% per annum for the period the funds were due till the date of actual remittance, which has been effected by passing an order under Section 7-Q and Section 14-B of the Employees

Provident Fund and Miscellaneous Provisions Act, 1952.

2. It is the case of the applicants that this was a provisional assessment made in the matter, and thereafter, the Provident Fund Authority has again assessed the amount under Section 7-A and 7-Q for the period from October, 2000 to June, 2003, and by order dated 31st May, 2004, it has found that a sum of Rs.2,77,66,313/- is due with future interest and damages, which come to a sum of Rs.1,89,156/- for the period March, 1993 to February, 1995 as per order dated 18th May, 2004, and, therefore, the total sum due and payable for the above three periods mentioned in the application comes to a sum of Rs.4,99,25,464/- with interest at the rate of 12% per annum as provided under Section 7, and the damages are assessed at Rs.3,95,03,918/-, and, therefore, according to the applicants, the total sum, which is required to be recovered towards the dues payable to Provident Fund, is Rs.9,11,72,892/-. Therefore, it is submitted that this Court may permit the applicants to withdraw initially a sum of Rs.2,90,45,000/- and interest accrued thereon from this Court.

3. In reply to the application, it has been contended by the

Recovery Officer of the respondent-bank that in view of the decision of the Supreme Court in the case of *Bank of Bihar v. The State of Bihar*, AIR 1971 S.C. 1710, the application is not maintainable, and that on an earlier occasion, remittance was made to the account of the Provident Fund Commissioner under an arrangement by obtaining an order by consent. It is, therefore, contended that out of the sum of Rs.240.45 lakhs lying in deposit in the Court, which is subject to the result of the petition, no disbursement can be made as sought for, as the claim of the respondent-bank itself is more than Rs.20 crores, and, therefore, the Court need not entertain any application for appropriation of the amount by other creditors, as respondent No. 1, which is a secured creditor, has a preferential right in the matter.

4. In the Civil Application, on 18th July, 2006, this Court took on record Minutes of the Order of the same date, wherein it had permitted the Maharashtra State Co-operative Bank Ltd. and the Provident Fund Commissioner, along with respondent No. 6, to dispose of 33,795 sugar bags within three months after floating public tender, and out of the sale-proceeds so received, to deposit

in this Court an amount of Rs.240.45 lakhs, and accordingly, a sum of Rs.240.45 lakhs is lying in deposit.

5. This Court had an occasion to deal with the issue in several writ petitions filed at its Principal Seat and Benches at Nagpur and Aurangabad. The present Letters Patent Appeal arises from District Aurangabad, and was transferred from Aurangabad Bench to the Principal Seat at Mumbai. On 29th June, 2007, a Division Bench of this Court considered a group of such applications filed in various writ petitions between the parties, where the Provident Fund Commissioner has sought to withdraw the amount lying deposited with the Court from the defaulting sugar factories for recovery of dues of Provident Fund of the employees of the sugar factories; and this Court, after considering the stand of the bank, which has financed the sugar factories, and taking into consideration the decision of the Supreme Court, which has been relied upon by the respondent-bank, was of the *prima facie* view that the Provident Fund Commissioner can be permitted to withdraw part of the amount so as to appropriate towards the Provident Fund dues of the workers of the respective sugar

factories.

6. The learned counsel for the parties drew our attention to the various interim orders passed by this Court from time to time in such matters, one being that passed in Writ Petition No. 6824 of 2005, wherein Civil Applications No. 1680 and 1681 of 2007 were filed by the Provident Fund Commissioner seeking recovery / withdrawal of the amount against payment of Provident Fund dues; and came to the *prima facie* conclusion that a worker's claim has a *pari passu* charge along with that of the secured creditors, and, therefore, the Provident Fund Commissioner can be permitted to appropriate part of the amount towards payment of Provident Fund dues.

7. In view of the fact that this Court has taken a consistent view that the amounts recovered from sugar factories by disposing of sugar against recovery made by co-operative banks for the secured creditors can be appropriated towards payment of Provident Fund dues, we find no reason to take a different stand, and allow the application in terms of prayer clause (a), with no

order as to costs.

J.N. PATEL, J.

A.A. SAYED, J.